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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77279955
Applicant	Liliana Pineyro Vega
Applied for Mark	NATURE-AID HEALTH, QUALITY, TECHNOLOGY
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Date	08/17/2009

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LILIANA PINEYRO VEGA,	:	SERIAL NO. 77279955
	:	
APPLICANT.	:	
	:	

APPLICANT’S MOTION FOR RECONSIDERATION INCLUDING BRIEF

APPEAL FROM THE FINAL OFFICE ACTION OF LEIGH A. LOWRY, TRADEMARK
EXAMINING ATTORNEY, DATED JULY 16, 2008, WHERE THE TRADEMARK
TRIAL AND APPEAL BOARD ISSUED ITS OPINION ON JULY 16, 2009

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APPLICANT

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INTRODUCTION

This Motion for Reconsideration Including Brief pertains to the Trademark Trial and Appeal Board's Opinion mailed on July 16, 2009.

This Motion for Reconsideration Including Brief is being filed timely. Due to the actual deadline falling on a weekend, this Motion is being filed on the following business day.

ARGUMENT FOR APPLICANT

In affirming the Trademark Examining Attorney's decision to refuse registration of the trademark "NATURE-AID HEALTH, QUALITY, TECHNOLOGY" (hereafter also "Applicant's Mark"), this Board reasoned that Applicant's Mark and the registrant's mark are both dietary supplements. As a result, this Board concluded that the goods protected by both marks are closely related, which would cause any likelihood of confusion (see Opinion at 5). The Board relied on Merriam-Webster online dictionary for a "dietary supplement" definition.

Pursuant to Merriam-Webster online dictionary, a "dietary supplement" is "a product taken orally that contains one or more ingredients (as vitamins or amino acids) that are intended to supplement one's diet and are not considered food" (see Opinion at 5). It is important to identify a key phrase here, which is "ingredients that... are not considered food."

Merriam-Webster online dictionary defines "natural food" as "food that has undergone minimal processing and contains no preservatives or artificial additives." See <http://www.meriam-webster.com>. The word "food" is in the center of the definition here.

Based on the analysis of the above definitions, goods under NATURADE might be considered dietary supplements because NATURADE does not protect any natural food ingredients (as stated above, dietary supplements do not contain natural food as an ingredient).

Goods under NATURE-AID, HEALTH, QUALITY, TECHNOLOGY, on the other hand, cannot be considered dietary supplements because Applicant's Mark specifically protects natural food supplements, i.e., supplements that have natural food as an ingredient.

It appears that this Board might have confused the definition of a dietary supplement provided by Merriam-Webster online dictionary, because this Board assigned a non-food meaning to the goods protected by Applicant's Mark. Meanwhile, as explained above, it is the natural food component that is the main ingredient of the goods protected by NATURE-AID, HEALTH, QUALITY, TECHNOLOGY.

Thus, goods under NATURE-AID, HEALTH, QUALITY, TECHNOLOGY cannot be considered dietary supplements, contrary to the Board's conclusion. Therefore, there is no likelihood of confusion and this Board should grant the within Motion for Reconsideration.

This Board found Applicant's Mark and registrant's mark similar in commercial impression due to the similarity in sound and appearance of the shared term NATURADE/NATURE-AID (see Opinion at 15). Meanwhile, this Board gave little weight to the commercial impression created by the design of Applicant's Mark (see

Opinion at 13). Nevertheless, it is well-settled that trademarks should be considered in their entirety, words and design. *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993).

NATURE-AID, HEALTH, QUALITY, TECHNOLOGY has a design that creates the following commercial impression: a product with natural food being a central ingredient (this is suggested by green leaves (i.e., natural food) being situated in a circle - center of the design); due to the main ingredient natural food, this product is more healthy and is of higher quality than other products lacking natural food (this is suggested by the words “health, quality, technology”).

NATURADE has no design attached to it, and the only commercial impression to be created is associated with a nature of the goods protected under NATURADE: medicinal preparations, namely, chlorophyll compositions, vitamins and vitamin formulations, minerals and mineral formulations, nutritional supplements, amino acid tablets; cold aids; energy tonics; laxatives; digestive enzymes; constipation aids; expectorants; and diuretics. There is nothing in the above goods that can be associated with natural food as a main ingredient.

While this Board found that Applicant had disclaimed the words “health, quality, technology” and that said words were descriptive, the technicality of a disclaimer in Applicant’s application has no legal effect on the issue of likelihood of confusion. *In re National Data Corporation*, 753 F.2d 1056 (Fed. Cir. 1985). The public is unaware of what words have been disclaimed during prosecution of the trademark application at the United States Patent and Trademark Office, and it is inappropriate to give the presence or absence of a disclaimer any legal significance. *Id.*

Thus, the words “health, quality, technology” should be considered in terms of the overall commercial impression. Therefore, there is no likelihood of confusion and this Board should grant the within Motion for Reconsideration.

CONCLUSION

The mark “NATURE-AID HEALTH, QUALITY, TECHNOLOGY” does not cause confusion, mistake, or deception. Thus, the mark should be allowed to register. Therefore, this Board should grant the within Motion for Reconsideration.

Respectfully Submitted,

/Liliana Pineyro Vega/
LILIANA PINEYRO VEGA
APPLICANT